

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN SKINNER, #202678

Plaintiff,

Case No. 05-71150

v.

District Judge Nancy G. Edmunds
Magistrate Judge R. Steven Whalen

JOHN ANDREW BEEMER,

Defendant.

**OPINION AND ORDER DENYING WITHOUT PREJUDICE
MOTION TO AMEND COMPLAINT**

On March 23, 2005, Plaintiff filed a *pro se* civil rights complaint, pursuant to 42 U.S.C. §1983, claiming that his constitutional rights were violated by Defendant John Beemer's use of excessive force in effectuating Plaintiff's arrest on October 9, 2003. Beemer is a Michigan State Police officer. Before the Court at this time is Plaintiff's Motion to Amend Complaint [Docket #12], filed on October 3, 2005. Plaintiff seeks to add other Defendants, and also to add a count of conspiracy against Defendant Beemer.

A review of Plaintiff's Motion shows that he has not filed a proof of service showing that Defendant Beemer was properly served with his motion.¹ Beemer filed an Answer to the Complaint, through counsel, on June 10, 2005.

¹ This may explain why Defendant has not filed a response to the motion to amend.

Fed.R.Civ.P. 5(a) provides that “every pleading subsequent to the original complaint...shall be served upon each of the parties.” Rule 5(b)(1) provides that “[s]ervice...on a party represented by an attorney is made on the attorney unless the court orders service on the party.” Plaintiff has failed to comply with these Rules, rendering his motion, in effect, an *ex parte* pleading that may not be considered by this Court. *See Tonneson v. Marlin Yacht Mfg., Inc.*, 2006 WL 708935 (11th Cir. 2006). In addition, Plaintiff has failed to comply with E.D. Mich. L.R. 15.1, which provides that a “party who moves to amend a pleading shall attach the proposed amended pleading to the motion.”²

Accordingly, Plaintiff’s Motion to Amend Complaint [Docket #12] is DENIED WITHOUT PREJUDICE. Plaintiff may refile and properly serve a motion that complies with the Federal Rules of Civil Procedure and the Local Rules of the Eastern District of Michigan within 30 days of the date of this Order.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: May 30, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys

²By its terms, “[f]ailure to comply with [L.R. 15.1] is not grounds for denial of the motion.” To be clear, Plaintiff’s motion is denied without prejudice because of noncompliance with Fed.R.Civ.P. (5). However, if Plaintiff refiles the motion to amend with proper proof of service, he is advised to comply with the Local Rules by attaching a proposed amended complaint.

and/or parties of record by electronic means or U.S. Mail on May 30, 2006.

S/G. Wilson

Case Manager